

**MOORPARK CITY COUNCIL
AGENDA REPORT**

TO: Honorable City Council

FROM: Barry K. Hogan, Deputy City Manager

DATE: May 30, 2008 (CC Meeting of 6/18/2008)

SUBJECT: Consider an Amendment to Title 8, Health and Safety, to Add Chapter 8.46, Shopping Carts, establishing requirements for the Abatement of Abandoned Shopping Carts

BACKGROUND

Shopping carts are being abandoned throughout the City creating cluttered and unsightly conditions. Carts have been found abandoned in the public right-of-way as well as on private property. Sometimes the carts are on a paved surface and other times they are found in front or side yard landscaping. This matter has been reviewed by the Community and Economic Development Committee (Mayor Pro-Tem Parvin and Councilmember Mikos). On April 16, 2008, the Committee recommended adoption of the attached ordinance. The City Attorney has reviewed the attached draft ordinance.

DISCUSSION

Cities can regulate abandoned shopping carts but are limited by the Health and Safety Code Sections 22435-22435.8. State law does not permit the City to go onto private property to remove a shopping cart. To require removal of shopping carts on private property the City must declare the abandoned shopping carts a property maintenance issue and use the property maintenance ordinance for removal. This process could take up to a month or more and targets the property owner, not the shopping cart owner. Requiring large fines of the shopping cart owner was examined, but state law provides that fines may not exceed \$50 per cart. State law permits impound of abandoned shopping carts prior to providing notice, so long as actual notice is given within 24 hours after the cart is impounded, but with impoundment comes retrieval costs and storage issues. Costs can be high due to state law requirements that after the City impounds the carts they must be held at a location that is both reasonably convenient to the owner of the shopping cart and open for business at least six hours of each business day (this would include Saturdays, Sundays, and holidays). Additionally, while state law would permit the City to recover its costs for the impound, collecting on those

costs may prove time consuming and costly because in some cases the City may have to resort to going to court or making the process subject to the administrative penalty process to collect those fees. Also, due to the fines, retailers may choose not to pick up their carts at all, placing an additional burden on the City to sell/dispose of the carts.

In light of all of the issues and state law restrictions, staff examined the restrictions that could be required of the cart owners and has prepared a cart containment ordinance. This ordinance requires retailers to submit a containment program to the City showing what they are doing to contain carts on-site, which may include the requirement of hiring a cart retrieval company or using a mechanical locking device on the cart, or both. Staff explored an ordinance that would allow the City to pick up abandoned cart but it would only cover those carts found on the public right-of-way and would still have the associated costs involved with impounding carts.

The purpose of the proposed ordinance is to prevent individuals from improperly using, altering, removing or abandoning shopping carts on public property and to ensure that business owners take measures to prevent the removal of shopping carts from their business site in a manner consistent with state law. It makes it against the law for any person to cause or permit any cart to be abandoned on or upon any sidewalk, street or other public area, or upon private property, other than the premises of the owner of such cart. It makes it against the law for any person, either temporarily or permanently, to remove a cart from business premises, or be in possession of a cart that has been removed from business premises which is properly identified in conformity with this chapter, without the written consent of the owner. The proposed ordinance also requires the shopping cart owner to have an approved abandoned cart prevention plan.

If someone removes a cart from the shopping center and is found in possession of the cart, the ordinance would allow the city to issue a citation to the person found with the cart. It also allows the City to issue citations to the business owner, if they are not in compliance with the ordinance.

ENVIRONMENTAL DETERMINATION

This is not a project under the California Environmental Quality Act.

STAFF RECOMMENDATION

1. Introduce Ordinance No. ____ for first reading, waive the full reading, and schedule second reading and adoption for July 2, 2008; and
2. Direct staff to prepare a resolution to implement the new fee and schedule for the July 2, 2008 meeting.

ATTACHMENT: Draft Ordinance No. ____.

ORDINANCE NO. 2008 _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MOORPARK, CALIFORNIA AMENDING TITLE 8, HEALTH AND SAFETY OF THE MOORPARK MUNICIPAL CODE, BY ADDING CHAPTER 8.50 SHOPPING CARTS

WHEREAS, at its meeting of June 18, 2008, the City Council conducted a hearing on amending Title 8, Health and Safety of the Moorpark Municipal Code, by adding Chapter 8.46, Shopping Carts, received public testimony on the proposed amendment, and after receiving oral and written public testimony, closed the hearing and reached a decision; and

WHEREAS, abandoned shopping carts are increasingly pervasive in the community, litter the parkways and curbs of the City, create potential safety hazards to the public, and interfere with pedestrian and vehicular traffic; and

WHEREAS, the accumulation of wrecked and dismantled abandoned shopping carts on public and private property tends to diminish property values and promote blight in the overall; and

WHEREAS amending Title 8, Health and Safety of the Moorpark Municipal Code, by adding Chapter 8.46, Shopping Carts is exempt from the provisions of the California Environmental Quality Act by the general rule that CEQA only applies to projects that may have a significant effect on the environment.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MOORPARK DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1. Title 8, Health and Safety of the Moorpark Municipal Code, is amended by adding Chapter 8.46, Shopping Carts as shown in Exhibit A attached.

SECTION 2. If any section, subsection, sentence, clause, phrase, part or portion of this Ordinance is for any reason held to be invalid or unconstitutional by any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions of this Ordinance. The City Council declares that it would have adopted this Ordinance and each section, subsection, sentence, clause, phrase, part or portion thereof, irrespective of the fact that any one or more section, subsections, sentences, clauses, phrases, parts or portions be declared invalid or unconstitutional.

SECTION 3. This Ordinance shall become effective thirty (30) days after its passage and adoption.

SECTION 4. The City Clerk shall certify to the passage and adoption of this ordinance; shall enter the same in the book of original ordinances of said City; shall make a minute of the passage and adoption thereof in the records of the proceedings of

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the City Council at which the same is passed and adopted; and shall, within fifteen (15) days after the passage and adoption thereof, cause the same to be published once in the Moorpark Star a newspaper of general circulation, as defined in Section 6008 of the Government Code, for the City of Moorpark, and which is hereby designated for that purpose.

PASSED AND ADOPTED this ____ day of _____, 2008.

Patrick Hunter, Mayor

Deborah S. Traffenstedt, City Clerk

Attachment:

Exhibit A, Chapter 8.50

CHAPTER 8.50

SHOPPING CARTS

- 8.50.010 Purpose.**
 - 8.50.020 Definitions.**
 - 8.50.030 Unauthorized removal or abandonment prohibited.**
 - 8.50.040 Shopping cart use at business other than that of owner.**
 - 8.50.050 Shopping cart alteration prohibited.**
 - 8.50.060 Declaration of nuisance.**
 - 8.50.070 Cart identification required.**
 - 8.50.080 Signage on premises.**
 - 8.50.090 Mandatory abandoned cart prevention plan.**
 - 8.50.100 Fees.**
 - 8.50.110 Plan approval or denial and penalties.**
 - 8.50.120 Plan modification.**
 - 8.50.130 Exemption from mandatory plan.**
 - 8.50.140 Renewal of exemption.**
 - 8.50.150 Denial or revocation of a renewal of an exemption.**
 - 8.50.160 Notice of denial or revocation.**
 - 8.50.170 Penalty.**
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- 8.50.010 Purpose.**

The purpose of this chapter is to prevent individuals from improperly using, altering, removing or abandoning shopping carts on public property and to ensure that business owners take measures to prevent the removal of shopping carts from their business site in a manner consistent with state law.

8.50.020 Definitions.

As used in this chapter, the following terms have the meanings set forth below:

“Abandoned shopping cart” shall mean any cart left unattended on either public or private property other than that of its business premises.

“Abandoned cart prevention plan” shall mean a document submitted by the responsible business owner pursuant to Section 8.50.090 of this chapter.

“Agent” shall mean the person or persons designated in the owner’s “abandoned cart prevention plan” authorized to perform or provide retrieval services on behalf of the owner of the business. The agent may be the owner if so designated in the approved abandoned cart prevention plan.

“Cart” shall mean a basket mounted on wheels or a similar device intended for the use of customers in a retail or commercial business establishment for the purpose of transporting goods of any kind within the confines of the business establishment, including the parking lot.

“City Manager” shall mean city manager or city manager’s designee.

“Owner” shall mean any person or entity, who in connection with the conduct of a business, possesses, leases or makes carts available to customers or the public for the

purpose of transporting merchandise on the business premises. For purposes of this chapter, "owner" shall also include the owner's designated agent.

"Premises" shall mean the entire area owned, occupied, and/or utilized by the owner, who provides carts for use by customers or other persons, including any parking lot or other property provided by or on behalf of the owner for customer parking or use.

8.50.030 Unauthorized removal or abandonment prohibited.

It is unlawful for any person to remove a cart from its business premises, be in possession of a properly identified cart that is not on its business premises, or cause or permit any cart to be abandoned upon any public or private property other than its business premises. This section does not apply to carts removed for repair, maintenance or proper disposal by an individual or firm under contract with the owner or carts retrieved for return to the business premises by an owner-authorized retrieval agent.

8.50.040 Shopping cart use at business other than that of owner.

It is unlawful for a business to knowingly have on its premises for the use by its customers, properly identified carts belonging to a different business owner.

8.50.050 Shopping cart alteration prohibited.

It is unlawful to alter, convert or tamper with any shopping cart or remove any part thereof without permission of the owner of the cart.

8.50.060 Declaration of nuisance.

Abandoned shopping carts are hereby declared a nuisance.

8.50.070 Cart identification required.

A. Every cart owned or provided by any business owner must have a sign permanently affixed to the cart that contains the following information:

1. Identity of owner, business establishment, or both.
2. Notification to the public that the removal of the cart from the premises is a violation of state and municipal law.
3. The address or phone number of the owner of the business establishment for cart return.

B. *Languages:* The information required above must be provided in English and Spanish or in such other language the city manager may reasonably require.

C. Any abandoned shopping cart that does not have the identification and information required by this section may be removed from the property and disposed of by the city or its authorized agent in accordance with the state law.

8.50.080 Signage on premises.

Every business that owns or provides carts for the use of its customers within the city shall post conspicuous signs at or near each entrance to its parking lot and the public entrance doors to its store notifying its customers that removal of carts from the premises is prohibited. Any posting of signs must comply with applicable provisions in Title 17 of the Municipal Code.

8.50.090 Mandatory abandoned cart prevention plan.

Every business owner who provides carts, or allows or intends to allow the use of carts, shall annually develop, implement and comply with the terms and conditions of a city approved abandoned cart prevention plan. The plan will identify methods currently employed to prevent the unauthorized removal by any person of any carts from the owner's premises. Renewal of the plan will be required on an annual basis. Those that have demonstrated implementation of a physical or electronic containment system that is found sufficient to contain carts from being removed from the property and abandoned on public or private property will require renewal only every three (3) years. The owner's abandoned cart prevention plan must include the following elements:

A. *Name of Business/Owner.* The name of the owner and the business name; the physical address where the business is conducted; name, address and phone number(s) of the on-site and off-site owner if different; and the name and/or title and telephone number of the day to day contact person at the location.

B. *Inventory of Carts.* A complete listing of the total number of carts maintained on or in the premises.

C. *Community Outreach.* A description of the community outreach process under which the owner shall cause notice to be provided to customers that the removal of carts from the premises is prohibited, and a violation of state and municipal law. This may include, but is not limited to, flyers distributed on the premises, warnings on shopping bags, signs posted in prominent places near door and parking lot exits, direct mail, announcements using intercom systems on the premises, web site or other means demonstrated to be effective. Any posting of signs must comply with applicable provisions in Title 17 of the Municipal Code.

D. *Cart Identification.* Signs and cart identification requirements which conform to state law.

E. *Loss Prevention Measures.* A description of the specific measures used to prevent cart removal from the premises. These measures may include, but are not limited to, electronic or other disabling devices on the carts so they cannot be removed from the premises, modifications to the carts and/or the retail location which eliminate the possibility of carts being removed from the inside of the retail location, use of courtesy clerks to accompany customers and return carts to the store, use of security personnel to prevent removal, or other demonstrably effective measures acceptable to the city, likely to prevent cart removal from the premises.

F. *Employee Training.* A description of an ongoing employee training program that shall be implemented by the owner and that shall be designed to educate

new and existing employees on the abandoned cart prevention plan and conditions contained therein at least annually.

G. *Mandatory Cart Retrieval.* A plan for retrieval of abandoned carts by the owner within a twenty-four (24) hour time period of removal, or a copy of a contract with a business registered to operate in Moorpark and approved retrieval service. All contracts for retrieval must include language which prohibits limits on daily loads and/or limits on daily or weekly drop-off of abandoned carts.

8.50.100 Fees.

Every owner who is required to submit an abandoned cart prevention plan, request for exemption or an application for a modification of such plan pursuant to this chapter shall submit, with the plan, request for exemption or plan modification, a fee as established by the City Council resolution.

8.50.110 Plan approval or denial and penalties.

A. Each business owner who provides carts shall be required to submit an abandoned cart prevention plan in compliance with this chapter. In implementing this chapter for the period beginning on the effective date of this chapter and ending December 31, 2008, the city manager shall provide not less than sixty (60) calendar days written notice to each owner of the date that the owner's initial abandoned cart prevention plan is due. The city manager shall approve or deny the proposed plan and notify the owner of such decision within sixty (60) calendar days of receipt of the plan. If approved, the abandoned cart prevention plan must be implemented by the owner no later than thirty (30) calendar days from the date of approval. After December 31, 2008, the owner shall comply with the provisions of this chapter regardless of receipt of written notice from the city manager.

B. The city manager may deny a plan based upon any of the following grounds:

1. Implementation of the plan would violate provisions of the building, zoning, health, safety, fire, police or other municipal codes, or any county, state, or federal law which substantially affects public health, welfare or safety;

2. The plan fails to include all the information required by this chapter;

3. The plan is insufficient or inadequate to prevent removal of carts from the owner's premises;

4. The plan fails to address any special or unique conditions due to the geographical location of the premises as they relate to cart retention and prevention efforts;

5. Implementation of the plan would violate a term or condition of another city policy or requirement of the municipal code;

6. The owner has knowingly made a false statement of fact, or omits a fact required to be revealed in an application for a plan, or in any addendum or report or other information required to be provided regarding the plan.

C. If the plan is rejected as incomplete or inadequate, the city manager shall indicate the areas of incompleteness or inadequacy, and the owner shall have an additional thirty (30) calendar days in which to resubmit a corrected plan.

D. An owner who fails to submit a complete plan, or fails to implement approved plan measures, or fails to comply with the approved plan measures, shall be subject to enforcement of these requirements through any lawful means available to the city.

E. The city manager's denial of a plan shall be final.

8.50.120 Plan modification.

At any time subsequent to the city manager's approval of an abandoned cart prevention plan, the owner may request a modification of a previously approved plan to address a change in circumstances, an unanticipated physical or economic impact of the plan, or a need to modify an ineffective plan.

8.50.130 Exemption from mandatory plan.

A. Any owner may request an exemption on an annual basis from the requirements of this chapter if the owner provides written documentation and demonstrates to the satisfaction of the city that the owner has less than ten carts on the premises.

B. A written application for the exemption must include all of the following information: The name and address of the business, the name and address of the owner, the name and address of the on-site contact person, and the number of carts on the premises.

C. Any exemption granted to an owner shall become void upon the sale or transfer of ownership of the business.

8.50.140 Renewal of exemption.

Any owner granted an exemption from the abandoned cart prevention plan shall file with the city manager a written application for a one (1) year renewal of the exemption annually in accordance with the provisions of section 8.50.130. The written application for a renewal of the exemption shall include the information required to be submitted in the initial application for the exemption in accordance with the provisions of section 8.50.140.

8.50.150 Denial or revocation of a renewal of an exemption.

An application for a renewal of an exemption may be denied or revoked by the city manager upon any of the following grounds:

1. The owner has failed to comply with any of the provisions of this chapter.
2. The owner knowingly makes a false statement of fact or omits a fact required to be revealed in an application for the exemption, or in any amendment or report or other information required to be made.

8.50.160 Notice of denial or revocation.

A. Upon determining the existence of any of the grounds for denial or revocation of a renewal of an exemption in accordance with this chapter, the city manager may issue to the owner a notice of intended decision to deny or revoke the exemption.

B. The notice of intended decision shall state all the grounds upon which the denial or revocation of the renewal application for an exemption is based.

C. The notice of intended decision shall specify the effective date of the denial or revocation of such exemption.

8.50.170 Violation and Penalty.

Any owner who violates a provision of this chapter or any provision of the owner's approved Abandoned Cart Prevention Plan shall be subject to an infraction as provided for in chapter 1.10 of this Code.